BEFORE THE APPEALS BOARD FOR THE KANSAS DIVISION OF WORKERS COMPENSATION

| JAMES O. JACKSON |) | |
|-----------------------|-------------|------------|
| Claimant |) | |
| VS. |) | |
| |) Docket No | o. 230,414 |
| CITY OF LAKIN |) | |
| Respondent |) | |
| AND |) | |
| |) | |
| EMC INSURANCE COMPANY |) | |
| Insurance Carrier |) | |

<u>ORDER</u>

Respondent appeals from a preliminary hearing order entered by Special Administrative Law Judge William F. Morrissey on May 15, 1998.

ISSUES

On appeal, respondent contends that the Special Administrative Law Judge exceeded his jurisdiction by entering an order for temporary total disability benefits because claimant has failed to show that he has suffered accidental injury arising out of and in the course of his employment and failed to establish that he gave timely notice as required by K.S.A. 44-520.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

After reviewing the record and considering the arguments, the Appeals Board concludes that the order by the Special Administrative Law Judge should be reversed.

Claimant alleges he hurt his back lifting a bag of concrete on April 28, 1997. Claimant also testified that he notified his supervisor, Mr. Robby McCombs, the next day. Mr. McCombs testified that claimant did not notify him of a work-related accident. Claimant argues that, on cross examination, Mr. McCombs acknowledged the possibility that claimant notified him. The Special Administrative Law Judge characterized Mr. McCombs' testimony as testimony which indicates Mr. McCombs could not recall whether claimant reported an injury.

After reviewing the testimony, the Board construes Mr. McCombs' testimony as testimony that claimant did not notify him of a work-related injury. He appears to acknowledge that anything is possible but, on balance, seems quite convinced that claimant did not mention an injury. In addition, medical records of treatment shortly after the alleged injury do not contain any history of a work-related injury. The Board finds the claimant failed to give notice and has failed to establish just cause for such failure.

WHEREFORE, it is the finding, decision, and order of the Appeals Board that the order entered by Special Administrative Law Judge William F. Morrissey on May 15, 1998, should be, and the same is hereby, reversed.

| IT IS SO ORDERED. |
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| Dated this day of July 1998. |
| BOARD MEMBER |

c: Robert A. Levy, Garden City, KS James M. McVay, Great Bend, KS William F. Morrissey, Special Administrative Law Judge Philip S. Harness, Director